

Date Issued: May 14, 1982 (AGO 82-40)

Requested by: Vincent A. LaQua, State's Attorney for Wells County

- QUESTION PRESENTED -

Whether it is necessary for a county with a population of more than six thousand but less than fifteen thousand to elect a clerk of district court.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that it is necessary for a county of a population of more than six thousand and less than fifteen thousand to elect a clerk of district court.

- ANALYSIS -

Section 8 of Article VII of the North Dakota Constitution states:

There shall be elected in each county, organized under the provisions of Article VII, Section 7, of the Constitution of the State of North Dakota, a register of deeds, county auditor, treasurer, sheriff, state's attorney, and a clerk of district court, who shall be electors in the county in which they are elected and who shall hold their office for a term of four years and until their successors are elected and qualified; provided in counties having population of six thousand or less the register of deeds shall also be clerk of the district court. This amendment shall be self-executing, but legislation may be enacted to facilitate its operation.

There is a proposed repeal and creation of a new Article VII which will be placed on the primary ballot. Sections 7 and 8 of that proposal read as follows:

Section 7. The legislative assembly shall also provide by law for optional forms of government for counties, but no optional form of government shall become operative in any county until submitted to the electors thereof at a special or general election, and approved by a majority of those voting thereon.

Until one of the optional forms of county government is adopted by any county, the fiscal and administrative affairs of the county shall be governed by a board of county commissioners as provided by law.

Section 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective county office shall be for a term of four years.

1979 N.D.S.L., 706, Section 3 provides:

ELECTION OF CLERK OF THE DISTRICT COURT AND EFFECTIVE DATE. In counties having populations of fifteen thousand or less but more than six thousand, a clerk of the district court shall be elected at the general election in 1982. The provisions of section 1 of this resolution, if approved by the people, shall take effect on January 1, 1983. The provisions of sections 2 and 3 of this resolution, if approved by the people, shall take effect thirty days after certification of approval. This section need not be printed as part of the permanent codification of the Constitution of the State of North Dakota.

Section 11-10-02 of the North Dakota Century Code states:

Each organized county, unless it has adopted one of the optional forms of county government, provided by the code, shall have the following officers:

\* \* \*

3. One clerk of the district court.

\* \* \*

It can be seen that 1979 N.D.S.L., 706, Section 3 requires a county with a population of fifteen thousand or less, but more than six thousand is required to elect a clerk of district court at the general election in 1982. It appears unclear as to where 1979 N.D.S.L., 706, Section 3 would fall. The Legislature stated in that section:

This section need not be printed as part of the permanent codification of the Constitution of the State of North Dakota. It appears, therefore, to have no distinct article or section number. However, even if the new Article VII is approved by the voters in the primary election in 1982, Section 7 of that article does read in part:

. . . Until one of the optional forms of county government is adopted by any county, the fiscal and administrative affairs of the county shall be governed by a board of county commissioners as provided by law.

Section 11-10-02(3), N.D.C.C., states that a county, unless it has adopted an optional form of government shall have one clerk of the district court, and further states:

The required officers shall be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge, and clerk of the district court, who shall be chosen in 1966 and every four years thereafter,. . .

These provisions of law lead to the conclusion that a clerk of the district court shall be elected in the general election of 1982 unless the county shall adopt an optional form of government prior to the general election and that optional form of government precludes the election of the clerk of the district court.

To be placed on the ballot for the general election, an individual must be successful in the primary election. To be placed on the ballot for the primary election an individual must file petitions in accordance with law. An individual could, of course, be a write-in candidate for office.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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